

**ASSEMBLY BILL**

**No. 1323**

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**Introduced by Assembly Member DeSaulnier**

February 23, 2007

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An act to amend Sections 49406 and 87408.6 of the Education Code, and to amend Sections 1226.1, 121362, 121490, 121525, and 121530 of the Health and Safety Code, relating to tuberculin testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1323, as introduced, DeSaulnier. Tuberculosis testing.

Existing law requires an intradermal tuberculin test as a part of employment in specified occupations.

This bill would authorize this test to be made by another tuberculin test approved by the federal Food and Drug Administration.

Existing law also requires each health care provider who treats a person for active tuberculosis disease, each person in charge of a health facility, or each person in charge of a clinic providing outpatient treatment for active tuberculosis disease, to promptly report to the local health officer when there are reasonable grounds to believe that a person has active tuberculosis disease, and when a person ceases treatment for tuberculosis disease. The initial disease notification report is required to include an individual treatment plan that includes, among other information, tuberculin skin test results.

This bill would alternatively authorize the reporting of the test results of another tuberculin test approved by the federal Food and Drug Administration.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 49406 of the Education Code is amended to read:

49406. (a) Except as provided in subdivision (h), no person shall be initially employed by a school district in a certificated or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. This examination shall consist of *either* an approved intradermal tuberculin test, which, if positive, shall be followed by an X-ray of the lungs, *or another tuberculin test approved by the federal Food and Drug Administration.*

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent or his or her designee may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are skin test negative *or negative for any other tuberculin test approved by the federal Food and Drug Administration* shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee remains ~~skin~~ *tuberculin* test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, *or another positive tuberculin test*, the foregoing examination is no longer required, and a referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent of schools a certificate from the examining physician and surgeon showing the employee was

1 examined and found free from active tuberculosis. The county  
2 board of education may require, by rule, that all their certificates  
3 be filed in the office of the county superintendent of schools or  
4 shall require their files be maintained in the office of the county  
5 superintendent of schools if a majority of the governing boards of  
6 the districts within the county so petition the county board of  
7 education, except that in either case a district or districts with a  
8 common board having an average daily attendance of 60,000 or  
9 more may elect to maintain the files for its employees in that  
10 district. "Certificate," as used in this section, means a certificate  
11 signed by the examining physician and surgeon or a notice from  
12 a public health agency or unit of the American Lung Association  
13 which indicates freedom from active tuberculosis. The latter,  
14 regardless of form, will constitute evidence of compliance with  
15 this section. Nothing in this section shall prevent the governing  
16 board, upon recommendation of the local health officer, from  
17 establishing a rule requiring a more extensive or more frequent  
18 physical examination than required by this section, but the rule  
19 shall provide for reimbursement on the same basis as required in  
20 this section.

21 (d) This examination is a condition of initial employment and  
22 the expense incident thereto shall be borne by the applicant unless  
23 otherwise provided by rules of the governing board. However, the  
24 board may, if an applicant is accepted for employment, reimburse  
25 that person in a like manner prescribed in this section for  
26 employees.

27 (e) The governing board of each district shall reimburse the  
28 employee for the cost, if any, of this examination. The board may  
29 provide for the examination required by this section or may  
30 establish a reasonable fee for the examination that is reimbursable  
31 to employees of the district complying with the provisions of this  
32 section.

33 (f) At the discretion of the governing board, this section shall  
34 not apply to those employees not requiring certification  
35 qualifications who are employed for any period of time less than  
36 a school year whose functions do not require frequent or prolonged  
37 contact with pupils.

38 The governing board may, however, require an examination  
39 described in subdivision-(2) (b) and may, as a contract condition,  
40 require the examination of persons employed under contract, other

1 than those persons specified in subdivision (a), if the board believes  
2 the presence of these persons in and around school premises would  
3 constitute a health hazard to pupils.

4 (g) If the governing board of a school district determines by  
5 resolution, after hearing, that the health of pupils in the district  
6 would not be jeopardized thereby, this section shall not apply to  
7 any employee of the district who files an affidavit stating that he  
8 or she adheres to the faith or teachings of any well-recognized  
9 religious sect, denomination, or organization and in accordance  
10 with its creed, tenets, or principles depends for healing upon prayer  
11 in the practice of religion and that to the best of his or her  
12 knowledge and belief he or she is free from active tuberculosis. If  
13 at any time there should be probable cause to believe that the affiant  
14 is afflicted with active tuberculosis, he or she may be excluded  
15 from service until the governing board of the employing district  
16 is satisfied that he or she is not so afflicted.

17 (h) A person who transfers his or her employment from one  
18 school or school district to another shall be deemed to meet the  
19 requirements of subdivision (a) if that person can produce a  
20 certificate which shows that he or she was examined within the  
21 past four years and was found to be free of communicable  
22 tuberculosis, or if it is verified by the school previously employing  
23 him or her that it has a certificate on file which contains that  
24 showing.

25 A person who transfers his or her employment from a private or  
26 parochial elementary school, secondary school, or nursery school  
27 to a school or school district subject to this section shall be deemed  
28 to meet the requirements of subdivision (a) if that person can  
29 produce a certificate as provided for in Section 3450 of the Health  
30 and Safety Code which shows that he or she was examined within  
31 the past four years and was found to be free of communicable  
32 tuberculosis, or if it is verified by the school previously employing  
33 him or her that it has a certificate on file which contains that  
34 showing.

35 (i) Any governing board or county superintendent of schools  
36 providing for the transportation of pupils under contract authorized  
37 by Section 39800, 39801, or any other provision of law shall  
38 require as a condition of the contract the examination for active  
39 tuberculosis, as provided by subdivision (a), of all drivers  
40 transporting these pupils, provided that private contracted drivers

1 who transport these pupils on an infrequent basis, not to exceed  
2 once a month, shall be excluded from this requirement.

3 SEC. 2. Section 87408.6 of the Education Code is amended to  
4 read:

5 87408.6. (a) Except as provided in subdivision (h), no person  
6 shall be initially employed by a community college district in an  
7 academic or classified position unless the person has submitted to  
8 an examination within the past 60 days to determine that he or she  
9 is free of active tuberculosis, by a physician and surgeon licensed  
10 under Chapter 5 (commencing with Section 2000) of Division 2  
11 of the Business and Professions Code. This examination shall  
12 consist of an X-ray of the lungs, ~~or~~ an approved intradermal  
13 tuberculin test, that, if positive, shall be followed by an X-ray of  
14 the lungs, *or another tuberculin test approved by the federal Food*  
15 *and Drug Administration.*

16 The X-ray film may be taken by a competent and qualified X-ray  
17 technician if the X-ray film is subsequently interpreted by a  
18 physician and surgeon licensed under Chapter 5 (commencing  
19 with Section 2000) of Division 2 of the Business and Professions  
20 Code.

21 The district superintendent, or his or her designee, may exempt,  
22 for a period not to exceed 60 days following termination of the  
23 pregnancy, a pregnant employee from the requirement that a  
24 positive intradermal tuberculin test be followed by an X-ray of the  
25 lungs.

26 (b) Thereafter, employees who are skin test negative, *or negative*  
27 *for any other tuberculin test approved by the federal Food and*  
28 *Drug Administration*, shall be required to undergo the foregoing  
29 examination at least once each four years or more often if directed  
30 by the governing board upon recommendation of the local health  
31 officer for so long as the employee remains ~~skin~~ *tuberculin* test  
32 negative. Once an employee has a documented positive skin test  
33 that has been followed by an X-ray, *or another positive test result*,  
34 the foregoing examinations shall no longer be required, and referral  
35 shall be made within 30 days of completion of the examination to  
36 the local health officer to determine the need for followup care.

37 (c) After the examination, each employee shall cause to be on  
38 file with the district superintendent a certificate from the examining  
39 physician and surgeon showing the employee was examined and  
40 found free from active tuberculosis. "Certificate," as used in this

1 subdivision, means a certificate signed by the examining physician  
2 and surgeon or a notice from a public health agency or unit of the  
3 American Lung Association that indicates freedom from active  
4 tuberculosis. The latter, regardless of form, will constitute evidence  
5 of compliance with this section.

6 (d) This examination is a condition of initial employment and  
7 the expense incident thereto shall be borne by the applicant unless  
8 otherwise provided by rules of the governing board. However, the  
9 board may, if an applicant is accepted for employment, reimburse  
10 the person in a like manner prescribed for employees in subdivision  
11 (e).

12 (e) The governing board of each district shall reimburse the  
13 employee for the cost, if any, of this examination. The board may  
14 provide for the examination required by this section or may  
15 establish a reasonable fee for the examination that is reimbursable  
16 to employees of the district complying with this section.

17 (f) At the discretion of the governing board, this section shall  
18 not apply to those employees not requiring certification  
19 qualifications who are employed for any period of time less than  
20 a college year whose functions do not require frequent or prolonged  
21 contact with students.

22 The governing board may, however, require the examination  
23 and may, as a contract condition, require the examination of  
24 persons employed under contract, other than those persons  
25 specified in subdivision (a), if the board believes the presence of  
26 these persons in and around college premises would constitute a  
27 health hazard to students.

28 (g) If the governing board of a community college district  
29 determines by resolution, after hearing, that the health of students  
30 in the district would not be jeopardized thereby, this section shall  
31 not apply to any employee of the district who files an affidavit  
32 stating that he or she adheres to the faith or teachings of any  
33 well-recognized religious sect, denomination, or organization and  
34 in accordance with its creed, tenets, or principles depends for  
35 healing upon prayer in the practice of religion and that to the best  
36 of his or her knowledge and belief he or she is free from active  
37 tuberculosis. If at any time there should be probable cause to  
38 believe that the affiant is afflicted with active tuberculosis, he or  
39 she may be excluded from service until the governing board of the  
40 employing district is satisfied that he or she is not so afflicted.

1 (h) A person who transfers his or her employment from one  
2 campus or community college district to another shall be deemed  
3 to meet the requirements of subdivision (a) if the person can  
4 produce a certificate that shows that he or she was examined within  
5 the past four years and was found to be free of communicable  
6 tuberculosis, or if it is verified by the college previously employing  
7 him or her that it has a certificate on file that contains that showing.

8 A person who transfers his or her employment from a private or  
9 parochial elementary school, secondary school, or nursery school  
10 to the community college district subject to this section shall be  
11 deemed to meet the requirements of subdivision (a) if the person  
12 can produce a certificate as provided for in Section 121525 of the  
13 Health and Safety Code that shows that he or she was examined  
14 within the past four years and was found to be free of  
15 communicable tuberculosis, or if it is verified by the school  
16 previously employing him or her that it has the certificate on file.

17 (i) Any governing board of a community college district  
18 providing for the transportation of students under contract shall  
19 require as a condition of the contract the examination for active  
20 tuberculosis, as provided in subdivision (a) of this section, of all  
21 drivers transporting the students, provided that privately contracted  
22 drivers who transport the students on an infrequent basis, not to  
23 exceed once a month, shall be excluded from this requirement.

24 (j) Examinations required pursuant to subdivision (i) shall be  
25 made available without charge by the local health officer.

26 SEC. 3. Section 1226.1 of the Health and Safety Code is  
27 amended to read:

28 1226.1. (a) A primary care clinic shall comply with the  
29 following requirements regarding health examinations and other  
30 public health protections for individuals working in a primary care  
31 clinic:

32 (1) An employee working in a primary care clinic who has direct  
33 contact with patients shall have a health examination within six  
34 months prior to employment or within 15 days after employment.  
35 Each examination shall include a medical history and physical  
36 evaluation. A written examination report, signed by the person  
37 performing the examination, shall verify that the employee is able  
38 to perform his or her assigned duties.

39 (2) At the time of employment, testing for tuberculosis shall  
40 consist of a purified protein derivative intermediate strength

1 intradermal skin test *or other tuberculin test approved by the*  
2 *federal Food and Drug Administration*. If a positive reaction is  
3 obtained from the skin test, the employee shall be referred to a  
4 physician to determine if a chest X-ray is necessary. Annual  
5 examinations shall be performed only when medically indicated.

6 (3) The clinic shall maintain a health record for each employee  
7 that includes reports of all employment-related health examinations.  
8 These records shall be kept for a minimum of three years following  
9 termination of employment.

10 (4) An employee known to have or exhibiting signs or symptoms  
11 of a communicable disease shall not be permitted to work until he  
12 or she submits a physician's certification that the employee is  
13 sufficiently free of the communicable disease to return to his or  
14 her assigned duties.

15 (b) Any regulation adopted before January 1, 2004, that imposes  
16 a standard on a primary care clinic that is more stringent than  
17 described in this section is void.

18 SEC. 4. Section 121362 of the Health and Safety Code is  
19 amended to read:

20 121362. Each health care provider who treats a person for  
21 active tuberculosis disease, each person in charge of a health  
22 facility, or each person in charge of a clinic providing outpatient  
23 treatment for active tuberculosis disease shall promptly report to  
24 the local health officer at the times that the health officer requires,  
25 but no less frequently than when there are reasonable grounds to  
26 believe that a person has active tuberculosis disease, and when a  
27 person ceases treatment for tuberculosis disease. Situations in  
28 which the provider may conclude that the patient has ceased  
29 treatment include times when the patient fails to keep an  
30 appointment, relocates without transferring care, or discontinues  
31 care. The initial disease notification report shall include an  
32 individual treatment plan that includes the patient's name, address,  
33 date of birth, tuberculin skin test results *or the results of any other*  
34 *tuberculin test approved by the federal Food and Drug*  
35 *Administration*, pertinent radiologic, microbiologic, and pathologic  
36 reports, whether final or pending, and any other information  
37 required by the local health officer. Subsequent reports shall  
38 provide updated clinical status and laboratory results, assessment  
39 of treatment adherence, name of current care provider if the patient  
40 transfers care, and any other information required by the local



health officer. A facility discharge, release, or transfer report shall include all pertinent and updated information required by the local health officer not previously reported on any initial or subsequent report, and shall specifically include a verified patient address, the name of the medical provider who has specifically agreed to provide medical care, clinical information used to assess the current infectious state, and any other information required by the local health officer. Each health care provider who treats a person with active tuberculosis disease, and each person in charge of a health facility or a clinic providing outpatient treatment for active tuberculosis disease, shall maintain written documentation of each patient's adherence to his or her individual treatment plan. Nothing in this section shall authorize the disclosure of test results for human immunodeficiency virus (HIV) unless authorized by Chapter 7 (commencing with Section 120975) of, Chapter 8 (commencing with Section 121025) of, and Chapter 10 (commencing with Section 121075) of Part 4 of Division 105.

In the case of a parolee under the jurisdiction of the Department of Corrections *and Rehabilitation*, the local health officer shall notify the assigned parole agent, when known, or the regional parole administrator, when there are reasonable grounds to believe that the parolee has active tuberculosis disease and when the parolee ceases treatment for tuberculosis. Situations where the local health officer may conclude that the parolee has ceased treatment include times when the parolee fails to keep an appointment, relocates without transferring care, or discontinues care.

SEC. 5. Section 121490 of the Health and Safety Code is amended to read:

121490. The examination shall consist of *either* an approved intradermal tuberculin skin test, that, if positive, is followed by an X-ray of the lungs, *or any other tuberculin test approved by the federal Food and Drug Administration*.

SEC. 6. Section 121525 of the Health and Safety Code is amended to read:

121525. (a) Except as provided in Section 121555, no person shall be initially employed by a private or parochial elementary or secondary school, or any nursery school, unless that person produces or has on file with the school a certificate showing that

1 within the last 60 days the person has been examined and has been  
2 found to be free of communicable tuberculosis.

3 (b) Thereafter, those employees who are skin test negative, *or*  
4 *negative for any other tuberculin test approved by the federal Food*  
5 *and Drug Administration*, shall be required to undergo the  
6 foregoing examination at least once each four years, or more often  
7 if directed by the school upon recommendation of the local health  
8 officer, for so long as the employee remains ~~skin~~ *tuberculin* test  
9 negative. Once an employee has a documented positive ~~skin~~  
10 *tuberculin* test, the foregoing examination is no longer required,  
11 and a referral shall be made within 30 days of completion of the  
12 examination to the local health officer to determine the need for  
13 followup care.

14 (c) At the discretion of the governing authority of a private  
15 school, this section shall not apply to employees who are employed  
16 for any period of time less than a school year whose functions do  
17 not require frequent or prolonged contact with pupils. The  
18 governing authority may, however, require the examination and  
19 may as a contract condition require the examination of persons  
20 employed under contract if the governing authority believes the  
21 presence of the persons in and around the school premises would  
22 constitute a health hazard to students.

23 (d) The governing authority of a private school providing for  
24 the transportation of pupils under authorized contract shall require  
25 as a condition of the contract that every person transporting pupils  
26 produce a certificate showing that within the last 60 days the person  
27 has been examined and has been found to be free of communicable  
28 tuberculosis, except that any private contracted driver who  
29 transports pupils on an infrequent basis, not to exceed once a  
30 month, shall be excluded from this requirement.

31 (e) The examination attested to in the certificate required  
32 pursuant to subdivision (d) of this section shall be made available  
33 without charge by the local health officer.

34 "Certificate," as used in this chapter, means a document signed  
35 by the examining physician and surgeon who is licensed under  
36 Chapter 5 (commencing with Section 2000) of Division 2 of the  
37 Business and Professions Code, or a notice from a public health  
38 agency or unit of the Tuberculosis Association that indicates  
39 freedom from active tuberculosis.

1 (f) Nothing in this section shall prevent the governing authority  
2 of a private, parochial, or nursery school, upon recommendation  
3 of the local health officer, from establishing a rule requiring a more  
4 extensive or more frequent examination than required by this  
5 section.

6 SEC. 7. Section 121530 of the Health and Safety Code is  
7 amended to read:

8 121530. The examination shall consist of *either* an approved  
9 intradermal tuberculosis test, that, if positive, shall be followed by  
10 an X-ray of the lungs, *or any other tuberculin test approved by*  
11 *the federal Food and Drug Administration.*

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